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E-Filed: August 28, 2013

6 Attorneys for City National Bank, N.A.

7 **UNITED STATES BANKRUPTCY COURT**
 8 **DISTRICT OF NEVADA**

9 In Re:

10 THE HOLDER GROUP SHARKEY'S, LLC,

11 Debtor.

12 Case No. BK-N-13-50844-BTB

13 Chapter 11

14 **CITY NATIONAL BANK'S OBJECTION**
 15 **TO DEBTOR'S DISCLOSURE**
STATEMENT

16 Hearing Date: September 12, 2013

17 Hearing Time: 10:00 a.m.

18 Est. Time: 10 minutes

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 22 City National Bank, N.A. ("CNB"), by and through its counsel, Law Offices of Amy N.
 Tirre, A Professional Corporation, hereby files its Objection to Debtor The Holder Group Sharkey,
 LLC's ("Debtor") Disclosure Statement, filed on June 13, 2013 as Docket No. 55 ("Disclosure
 Statement") in support of Debtor's Plan of Reorganization filed on June 13, 2013 as Docket No. 54
 ("Plan"). This Objection is based upon the following points and authorities, the pleadings and
 papers on file herein and the arguments of counsel at a hearing on this matter.

23 **POINTS AND AUTHORITIES**

24 **I. JURISDICTION**

25 This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is
 26 a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and is a contested matter pursuant to Rule
 27 9014 of the Federal Rules of Bankruptcy Procedure.

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II. RELEVANT FACTS AND BACKGROUND

On April 30, 2013, Debtor filed its voluntary petition under Chapter 11 of Title 11 of the United States Code (“the Bankruptcy Code”). Under 11 U.S.C. §1107, Debtor continues to operate as debtor-in-possession.

A. CITY NATIONAL BANK'S TWO LOANS TO DEBTOR

1. Loan XX7837-00698

On May 5, 2003, CNB's predecessor-in-interest, Business Bank of Nevada ("BBN"), as lender, entered into a Business Loan Agreement with Debtor, as borrower, whereby BBN loaned the principal amount of \$150,000 to Debtor ('Loan 698').

On May 5, 2003, Debtor executed a Promissory Note as the maker in favor of BBN. The term of the Promissory Note is ten (10) years. It has a variable interest rate with the initial interest rate being 7.00%. The Promissory Note provided for payments in the amount of \$1,172.42 each for 119 months commencing June 5, 2003 with a final payment of all accrued interest and principal due on May 5, 2013, estimated to be in the amount of \$101,680.61.

This Note is secured by a first deed of trust recorded against the improved real property located at 1432 U.S. Highway 395 Gardnerville, NV 89410 with APN 1320-33-401-033 ("Highway 395 Property") recorded as Document No. 0576387 with the Douglas County Recorder's Office on May 12, 2003.

Harold D. Holder, Sr. executed a Commercial Guaranty of Loan 698.

2. Loan XX7845-00728

On May 5, 2003, CNB's predecessor-in-interest, Business Bank of Nevada ("BBN"), as lender, entered into a second Business Loan Agreement with Debtor, as borrower, whereby BBN loaned the principal amount of \$150,000 to Debtor ("Loan 728").

1 On May 5, 2003, Debtor executed a Promissory Note as the maker in favor of BBN. The
 2 term of the Promissory Note is ten (10) years and the maturity date was May 5, 2013. It has a
 3 variable interest rate with the initial interest rate being 7.00%. The Promissory Note provided for
 4 payments in the amount of \$1,172.42 each for 119 months commencing June 5, 2003 with a final
 5 payment of all accrued unpaid interest and principal due on May 5, 2013; the final payment was
 6 estimated to be in the amount of \$101,680.61.

7 This Note is secured by a first deed of trust recorded against the improved real property
 8 located at 1222 Gilman Avenue, Gardnerville, NV 89410 with APN 1320-33-401-017 ("Gilman
 9 Property") recorded as Document No. 0576381 with the Douglas County Recorder's Office on May
 10 9, 2003.

12 Harold D. Holder, Sr. executed a Commercial Guaranty of Loan 728.

13 **B. CNB ACQUIRES BUSINESS BANK OF NEVADA**

14 On or about February 28, 2007, CNB acquired Business Bank of Nevada. Despite Debtor's
 15 representation to the contrary, BBN was not closed by the FDIC. CNB became the owner and
 16 holder of the Promissory Notes and Deeds of Trust and all loan documents for Loan 698 and Loan
 17 728 through an acquisition.

19 **C. MATURITY, DEFAULT, AND ADEQUATE PROTECTION**

20 On May 5, 2013, both Loan 698 and Loan 728 matured. Debtor filed its voluntary petition
 21 on April 30, 2013, which was six (6) days prior to the maturity date. As of the petition date, CNB
 22 is owed approximately \$106,487.81 for Loan 698 and \$106,487.81 for Loan 728. Debtor failed to
 23 pay off both loans.

25 Pursuant to the Order Approving Emergency Motion for Interim Approval of Use of Cash
 26 Collateral by Debtor and Granting Adequate Protection and Scheduling a Final Hearing to Approve
 27 Use of Cash Collateral by Debtor as Amended entered on May 14, 2013 as Docket No. 39, CNB
 28

has been receiving monthly adequate protection payments.

III. APPLICABLE LAW

A disclosure statement is required to contain “adequate information,” which is defined as “information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of holders of claims or interests in the case, that would enable such a hypothetical investor of the relevant class to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to the creditors and other parties in interest, and the cost of providing additional information.” 11 U.S.C. §1125(a)(1).

IV. ARGUMENT

**A. CNB JOINS IN SEA HORSE I, LLC'S AND NEVADA STATE BANK'S
OBJECTIONS WITH RESPECT TO THE FEASIBILITY OF
DEBTOR'S PLAN**

On August 12, 2013, Nevada State Bank filed its Objection to Debtor's Disclosure Statement as Docket No. 70 ("NSB Objection") and on August 20, 2013, Sea Horse 1, LLC, filed its Objection to Debtor's Disclosure Statement as Docket No. 72 ("Sea Horse Objection"). In both Objections, NSB and Sea Horse raise concerns about the feasibility of Debtor's Plan. Based upon CNB's own analysis, Debtor's Plan provides for payments in excess of \$37,000 per month to service its debt owed to secured creditors. Debtor's most recently filed Monthly Operating Report ("MOR") for July 2013 shows that Debtor is operating at a net loss on a monthly basis and has a cumulative post-petition loss of \$68,000 through July 31, 2013. There is no information about how

1 Debtor will address its ongoing cash shortfalls and be able to perform under its Plan. If Harold D.
 2 Holder, Sr. or Holder Group, LLC (Debtor's 100% owner) are going to fund the Plan through equity
 3 contributions or loans, their financial ability to do so must be disclosed.

4 **B. DEBTOR SHOULD CLARIFY THAT SHARKEY'S CASINO AND THE
 5 CASINO ARE NOT SEPARATE ENTITIES FROM DEBTOR**

6 Throughout its Disclosure Statement, Debtor refers to the "Sharkey's Casino" or "the
 7 Casino" as if it were a separate legal entity from Debtor. CNB requests that any order approving
 8 Debtor's Disclosure Statement make clear that Sharkey's Casino is a "dba" for Debtor and that
 9 Sharkey's Casino and the Casino are one in the same as Debtor.

10 **CONCLUSION**

11 Based upon the foregoing, CNB requests that additional information be provided in order to
 12 provide adequate disclosure for approval of Debtor's Disclosure Statement.

13 DATED August 28, 2013.

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 16 **LAW OFFICES OF AMY N. TIRRE**
 17 A Professional Corporation

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 /s/ Amy N. Tirre
 AMY N. TIRRE, ESQ.

CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of Law Offices of Amy N. Tirre, that I am over the age of 18 and not a party to the above-referenced case, and that on August 28, 2013 I filed and served the **CITY NATIONAL BANK'S OBJECTION TO DEBTOR'S DISCLOSURE STATEMENT** as indicated:

X **BY NOTICE OF ELECTRONIC FILING:** through Electronic Case Filing System of the United States Bankruptcy Court, District of Nevada, to the individuals and/or entities at their email addresses as set forth below:

- AARON E DAVIS aaron.davis@bryancave.com, kat.flaherty@bryancave.com; brandy.mcmillion@bryancave.com; leslie.bayles@bryancave.com
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BY HAND DELIVERY VIA COURIER: by causing hand delivery of the Document listed above via Legal Express to the persons at the addresses set forth below.

BY MAIL: by placing the document listed above in a sealed envelope with Postage thereon fully prepaid in the United States Mail at Reno, Nevada, and addressed as set forth below. I am readily familiar with my office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on 28 August 2013, with postage thereon fully prepaid in the ordinary course of business.

DATED August 28, 2013.

/s/ Genevieve DeLucchi
An Employee of Law Offices of Amy N. Tirre

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